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February 13, 2008

VIA ELECTRONIC FILING

Mr. Charles L.A. Terreni
Chief Clerk of the Commission
S.C. Public Service Commission
P.O. Drawer 11649
Columbia, SC 29211

RE: Application of Duke Energy Carolinas, LLC for Approval of Energy Efficiency Plan Including and Energy Efficiency Rider and Portfolio of Energy Efficiency Programs (Docket No. 2007-358-E)

Dear Mr. Terreni:

Please find attached for electronic filing in the above-referenced docket the Response of Environmental Intervenors to Joint Motion for Approval of Partial Settlement and Adoption of Settlement Agreement. By copy of this letter I am serving a copy of the same on all parties of record via electronic mail and U.S. Mail. If you have questions, please do not hesitate to contact me.

Sincerely,

s/Kate Double
Legal Assistant

Enclosure
Cc (w/encl.): Parties of Record (via electronic mail and U.S. Mail)

STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2007-358-E

In the Matter of:	)	
	)	
Application of Duke Energy Carolinas, LLC for Approval of Energy Efficiency Plan Including an Energy Efficiency Rider and Portfolio of Energy Efficiency Programs	)	Response of Environmental Intervenors to Joint Motion for Approval of Partial Settlement and Adoption of Settlement Agreement

Pursuant to S.C. Reg. 103-829, the South Carolina Coastal Conservation League ("CCL"), Environmental Defense ("ED"), Southern Alliance for Clean Energy ("SACE") and the Southern Environmental Law Center ("SELC") (collectively, the "Environmental Intervenors"), by and through counsel, hereby respond to the Joint Motion for Approval of Partial Settlement and Adoption of Settlement Agreement ("Joint Motion") filed by Duke Energy Carolinas, LLC ("Duke"), the South Carolina Office of Regulatory Staff ("ORS"), South Carolina Energy Users Committee ("SCEUC") and Wal-Mart Stores East, LP ("Wal-Mart") (collectively "the Settling Parties") on January 29, 2008.[1]

In response to the Joint Motion, the Environmental Intervenors state as follows:

Introduction

1. The Environmental Intervenors welcome Duke's effort to initiate a large-scale energy efficiency program in its South Carolina service territory. As proposed, however, the agreement reached by the Settling Parties does not address the serious

[1] At hearing, Environmental Intervenors requested an opportunity to file a written response to the Joint Motion for Approval of Partial Settlement and Adoption of Settlement Agreement filed by Duke, ORS and Piedmont Natural Gas Company, Inc. ("Piedmont Joint Motion") on February 1, 2008. Environmental Intervenors do not oppose the Piedmont Joint Motion.

concerns that Environmental Intervenors have regarding Duke's "save-a-watt" Application, including the save-a-watt program's overemphasis on load management as opposed to energy conservation measures, and the cost recovery mechanism that would grossly overcompensate Duke beyond the level necessary to incentivize Duke to capture all cost-effective energy efficiency, with little or no financial benefit to customers.

2. The Environmental Intervenors are aware that Duke has been in discussions with energy efficiency advocacy groups that are not parties to this proceeding. Prior to filing the Joint Motion, however, Duke did not contact counsel for Environmental Intervenors in an attempt to engage in settlement negotiations. Counsel for ORS and for Wal-Mart did inform counsel for the Environmental Intervenors that settlement discussions were underway among the Settling Parties, but did not invite the Environmental Intervenors to participate in the ongoing settlement negotiations.

3. Environmental Intervenors wish to respond specifically to certain provisions in the proposed Settlement Agreement, as set forth in the paragraphs below.

Opt-out for Large Customers

4. Under the proposed settlement, large industrial and commercial customers would be allowed to "opt out" of the energy conservation portion of the proposed Rider EE (SC) under certain conditions.

5. The Settling Parties have not submitted evidence sufficient to show that the opt-out provision proposed in the Settlement Agreement is in the public interest. For example, affiliates of large customers would be able to aggregate the load of their individual accounts in order to meet the opt-out threshold, leaving independently owned large customers unable to opt out, even if they have invested in cost-effective energy

efficiency measures of their own. Moreover, the Settling Parties have not provided the Commission with sufficient detail regarding the criteria Duke would employ in evaluating whether an otherwise eligible customer's energy efficiency measures qualify it to opt out. For example, the Supplemental Testimony and Exhibits offered by Duke provide no information regarding the cost-effectiveness tests that would be used to make this determination. Indeed, as proposed it appears that the decision rests within the discretion of Duke, the third-party contractor performing the audit or analysis and the customer itself—leaving the Commission with no oversight of the determination.

6. The Environmental Intervenors agree in principle that an opt-out provision for large customers may be appropriate. However, the Environmental Intervenors submit that a program that provides a performance-based rate discount incentive equal to the amount of the Rider EE (SC) that a company would have paid, had it not implemented energy efficiency measures, would be a superior alternative.

Return of Demand Side Management Balance to Customers

7. Under the proposed Settlement Agreement, a balance of $87 million in customer overcharges would be "flowed through" to customers via a rate decrement to offset the effect of the Rider EE (SC) increase.

8. The $87 million DSM balance represents accumulated DSM billings in excess of DSM costs incurred by Duke, i.e., money that Duke owes its customers and that it must return to them, regardless of whether the proposed Settlement or the pending Application are approved. The accelerated flow-through of the DSM deferral balance appears to be an attempt to take the "sting" out of the Rider EE (SC). No testimony or

other evidence has been offered to show that it is in the public interest to tie the return of these overcharges to customers to approval of the pending save-a-watt Application.

Agreement to Reduce Percentage of Avoided Cost by Five Percent

9. The Settling Parties have agreed that the percentage of avoided generation costs that would be used for purposes of compensating Duke be reduced from 90 percent to 85 percent.

10. A five percent reduction of the avoided cost percentage level for the revenue requirement does not mitigate the concern that Duke's avoided cost compensation scheme is not in the public interest. At 85 percent of avoided costs, the basis for compensation to Duke remains grossly overpriced and would allow Duke to recover far more than necessary to incent Duke to pursue maximum cost-effective energy efficiency (thus reducing customer bills). Linking revenue to avoided costs is inherently unfair to customers because avoided costs are not a measure of value—they are a measure of supply price in a market where the end customers do not directly encounter that price.

Public Interest

11. ORS states that it has determined that the public interest would best be served by the proposed Settlement Agreement. As the Commission is aware, ORS is charged with representing the public interest of South Carolina before the Commission. S.C. Code Ann. § 58-4-10(B); Office of Regulatory Staff v. S.C. PSC, 374 S.C. 46, 50 n. 1, 647 S.E.2d 223, 225 n. 1 (2007). The "public interest" determination involves balancing the concerns of the using and consuming public; economic development and job attraction and retention in South Carolina; and the financial integrity, reliability and

high quality of the state's public utilities and utility services. S.C. Code Ann. § 58-4-10(B).

12. ORS has offered no testimony or other evidence in support of its determination that the proposed settlement is in the public interest, however. Nor is there substantial evidence to support this conclusion elsewhere in the record.

Conclusion

13. The record, as it stands, does not contain substantial evidence to support the proposed Settlement Agreement, as required by the Commission's Settlement Policies and Procedures.

WHEREFORE, because the Settling Parties have not shown that the proposed settlement is just, fair, and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy, the Environmental Intervenors request that the Commission deny the Joint Motion to approve the partial settlement between Duke, ORS, SCEUC and Wal-Mart. In the alternative, we request that the Commission require the further development of an appropriate record regarding the proposed settlement by allowing the non-settling parties to submit supplemental testimony in rebuttal to the supplemental testimony filed by Duke witnesses Ellen T. Ruff and Stephen M. Farmer and reconvening the hearing for further testimony and oral argument.

Respectfully submitted this 13th day of February, 2008.

s/ J. Blanding Holman, IV
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CERTIFICATE OF SERVICE

I hereby certify that the following persons have been served with the Response of Environmental Intervenors to Joint Motion for Approval of Partial Settlement and Adoption of Settlement Agreement by electronic mail and U.S. Mail:

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This 13th day of February, 2008.

s/ Kate Double